IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 112 of 2005

RAJENDRA PRASAD
V/S
SHANTILAL

Mr. PRADEEP SHAH, for the appellant / petitioner

Mr. RAJAT DAVE, for the respondent

Date of Order : 26.4.2005

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the parties.

Perused the impugned Judgments of both the learned courts below, and also gone through the evidences as made available by the learned counsel for the appellant. Both the learned courts below have decreed the suit for eviction from the suit shop on the ground of reasonable and bonafide necessity of the plaintiff for his son Mukesh. It was argued that during the pendency of the suit, Mukesh has got employment at Bhilwara and, therefore, bonafide necessity does not survive.

I have read the statement of Mukesh, PW-4, who has deposed that, it is on account of his sitting idle, and financial difficulties, and as family dispute arising on that count, that he had to take up the job, therefrom, he was receiving only Rs.1500/- per month all told. In these circumstances, it cannot be said that simply because the plaintiff's son Mukesh has, for the time being, taken up the job, reasonable and bonafide necessity comes to an end.

Next submission made is, that during the pendency of the suit, the adjoining shop fell vacant, was not used by plaintiff for establishing his son Mukesh. This aspect has been considered by the learned courts below, and it has been noticed that adjoining apartment is garage, which has been occupied by the plaintiff's another son Anil, who is carrying on business of Manihari in that premises. The learned Lower Appellate Court has found that other premises has not been parted with

possession by the plaintiff in favour of anybody else whether by letting out or otherwise, and the plaintiff has only established his son in that premises, who had come up of age during this period.

In my view, if the plaintiff has more than one sons, and if other apartment fell vacant, wherein he established his other son, it cannot be said that either bonafide necessity came to an end, or that bonafide necessity was not there. Thus this contention also has no force. The findings recording by learned courts below on the question of reasonable and bonafide necessity, so also partial eviction, are pure findings of facts, and do not require any interference in this appeal. Thus I do not find any force in this appeal, and same is therefore dismissed summarily.

At the request of the learned counsel for the appellant, the appellant is given one and half years' time to vacate the suit premises on the condition that the defendant gives an undertaking before the learned trial court within one month from today that on or before the expiry of the above period, he will peacefully hand over the vacant possession of the suit premises to the plaintiff and that during this period, he will not, in any manner, transfer the possession of the suit premises to anybody. Likewise, the entire decretal amount, so also all arrears of rent, if any, shall be deposited by the appellant in the trial court within one month from today and shall further continue to deposit amount equal to the monthly rent by way of damages for use and occupation by 15th of each succeeding month, till the actual delivery of possession. In case the appellant fails to comply with any of the above conditions, the respondent will become automatically entitled to execute the decree forthwith.

(N.P.GUPTA),J.

/Srawat/